

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of U-Haul Co. of South Carolina,  
Incorporated for a Class E (Household Goods)  
Certificate of Public Convenience and Necessity for  
the Operation of a Motor Vehicle Carrier

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2009 - 141 - T

(Please type or print)

Submitted by: John J. Pringle, Jr

SC Bar Number: 11208

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

**DOCKETING INFORMATION** (Check all that apply)

☐ Emergency Relief demanded in petition ☒ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: \_\_\_\_\_

**INDUSTRY (Check one)**

**NATURE OF ACTION (Check all that apply)**

- |  |  |  |  |
|--|--|--|--|
| <input type="checkbox"/> Electric                    | <input type="checkbox"/> Affidavit                 | <input type="checkbox"/> Letter                            | <input type="checkbox"/> Request                   |
| <input type="checkbox"/> Electric/Gas                | <input type="checkbox"/> Agreement                 | <input checked="" type="checkbox"/> Memorandum             | <input type="checkbox"/> Request for Certificatio  |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer                    | <input checked="" type="checkbox"/> Motion                 | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Electric/Water              | <input type="checkbox"/> Appellate Review          | <input type="checkbox"/> Objection                         | <input type="checkbox"/> Resale Agreement          |
| <input type="checkbox"/> Electric/Water/Telecom.     | <input type="checkbox"/> Application               | <input type="checkbox"/> Petition                          | <input type="checkbox"/> Resale Amendment          |
| <input type="checkbox"/> Electric/Water/Sewer        | <input checked="" type="checkbox"/> Brief          | <input type="checkbox"/> Petition for Reconsideration      | <input type="checkbox"/> Reservation Letter        |
| <input type="checkbox"/> Gas                         | <input type="checkbox"/> Certificate               | <input type="checkbox"/> Petition for Rulemaking           | <input type="checkbox"/> Response                  |
| <input type="checkbox"/> Railroad                    | <input type="checkbox"/> Comments                  | <input type="checkbox"/> Petition for Rule to Show Cause   | <input type="checkbox"/> Response to Discovery     |
| <input type="checkbox"/> Sewer                       | <input type="checkbox"/> Complaint                 | <input type="checkbox"/> Petition to Intervene             | <input type="checkbox"/> Return to Petition        |
| <input type="checkbox"/> Telecommunications          | <input type="checkbox"/> Consent Order             | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation               |
| <input checked="" type="checkbox"/> Transportation   | <input type="checkbox"/> Discovery                 | <input type="checkbox"/> Prefiled Testimony                | <input type="checkbox"/> Subpoena                  |
| <input type="checkbox"/> Water                       | <input type="checkbox"/> Exhibit                   | <input type="checkbox"/> Promotion                         | <input type="checkbox"/> Tariff                    |
| <input type="checkbox"/> Water/Sewer                 | <input type="checkbox"/> Expedited Consideration   | <input type="checkbox"/> Proposed Order                    | <input type="checkbox"/> Other:                    |
| <input type="checkbox"/> Administrative Matter       | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest                           |  |
| <input type="checkbox"/> Other:                      | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit             |  |
|  | <input type="checkbox"/> Late-Filed Exhibit        | <input type="checkbox"/> Report                            |  |

# ELLIS:LAWHORNE

John J. Pringle, Jr.  
Direct dial: 803/343-1270  
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January 25, 2010

**FILED ELECTRONICALLY**

The Honorable Charles L.A. Terreni  
Chief Clerk  
**South Carolina Public Service Commission**  
PO Drawer 11649  
Columbia SC 29211

RE: Application of U-Haul Co. of South Carolina, Incorporated for a  
Class E (Household Goods) Certificate of Public Convenience and  
Necessity for the Operation of a Motor Vehicle Carrier  
**Docket No. 2009-141-T, Our File No. 2054-11673**

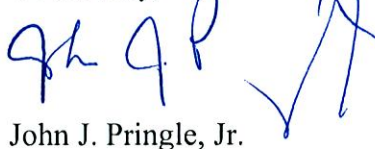
Dear Mr. Terreni:

Enclosed is the Brief of U-Haul Co. of South Carolina, Incorporated, filed on  
behalf of the Applicant in the above-referenced docket. By copy of this letter, I am serving all  
parties of record in this proceeding and enclose my Certificate of Service to that effect.

Please call if you have any questions regarding this matter.

With kind regards, I am

Yours truly,



John J. Pringle, Jr.

JJP/cr

Enclosure: as stated

cc: Jeffrey M. Nelson, Esquire (via electronic mail service)  
Mr. Thomas Tollison (via electronic mail service)  
All parties of record

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2009-141-T**

IN RE:	)	
Application of U-Haul Company	)	<b>BRIEF OF THE APPLICANT, U-HAUL</b>
of South Carolina, Incorporated for a	)	<b>COMPANY OF SOUTH CAROLINA, INC.,</b>
Class E (Household Goods)	)	<b>ADDRESSING JURISDICTION</b>
Certificate of Public Convenience and	)	
Necessity for Operation of a Motor	)	
Vehicle Carrier	)	

On January 20, 2010 the Public Service Commission of South Carolina (“Commission”) suspended the hearing in the above referenced matter and requested that the parties file briefs addressing the jurisdiction of Commission over this matter.

**APPLICABLE LAW**

South Carolina Code Ann. § 58-23-590(A)(Supp. 2000) authorizes the (“Commission”) to “govern the operations of carriers of household goods.” To that end, South Carolina Code Ann. § 58-23-590(C)(Supp. 2000) provides for certification of carriers of household goods, stating that the Public Service Commission shall issue a common carrier certificate of public convenience and necessity if an applicant proves to the Commission that: “(1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the Commission's regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.”



49 U.S.C.A. §14501(c)(1) preempts the field with respect to motor carriers of property, subject to certain exclusions. One such exclusion, Subsection (c)(2)(A), deals with the “safety regulatory authority of a State with respect to motor vehicles” and minimum insurance requirements. Another such exclusion, 49 U.S.C.A. §14501(c)(2)(B), provides that the preemption “does not apply to the intrastate transportation of household goods.”

By way of the 2005 SAFETEA-LU (119 Stat. 1751), the United States Congress amended the federal statute addressing carriers of household goods. The new definition for “household goods motor carrier” included those carriers providing some or all of the following “(1) [p]roviding binding and nonbinding estimates; (2) inventorying; (3) protective packing and unpacking of individual items at personal residences; and (4) loading and unloading at personal residences.” SAFE, ACCOUNTING, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS (“SAFETEA-LU”), H.R. 3, 109<sup>TH</sup> Congress § 4202 (2005) (the “Act”).

The Act also included a “Limited Service Exclusion” stating that the term household goods motor carrier “does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier.” 49 U.S.C.A. § 13102(12)(C). The corresponding regulation, 49 C.F.R. § 375.103, was also changed in conformity with the Act, and “[a]s required by the statute, the definition excludes a motor carrier transporting household goods in containers or trailers that are entirely loaded and unloaded by an individual who is not employed by or acting as an agent of the carrier.” Comment A, Amendments To Implement Certain

Provisions of the SAFETEA-LU; Final Rule 72 FR 36760, 36764. These statutory and regulatory changes recognize the fundamental difference between household goods carriers and carriers of property.

### **ARGUMENT**

Portable storage containers are provided to consumers for storing and moving goods. A carrier drops off the container to be loaded by the consumer. The consumer then has the option to use the container as on-site storage, have the container transported for off-site storage, or have the container moved to another location of the consumer's choosing. At the conclusion of the rental period, the consumer unloads the container and the carrier retrieves it. Notably, the carrier does not enter the dwelling of the consumer, and is not responsible for the packing of goods, or the unloading and loading of same.

Heretofore, the Commission has treated carriers of portable storage containers as carriers of household goods and regulated them accordingly. The enactment of the SAFETEA-LU, however, preempted states' ability to regulate carriers of portable storage containers as household goods. Because goods transported in portable storage containers loaded by someone other than the carrier do not qualify as "household goods," the preemption by the Federal Government vis-à-vis 49 U.S.C.A. §14501(c)(1) applies to the regulation of goods transported in portable storage containers. As such, states "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier ... with respect to the transportation of property." 49 U.S.C.A. §14501(c)(1).

In keeping with this mandate, the current trend in other states is to classify carriers of portable storage containers as carriers of property based on the service

provided, as opposed to household goods, irrespective of the container's contents. Final Order Adopting Regulation, Revision of 52 Pa. Code § 21.1 Pertaining to the Term Household Goods in Use Carrier, L-2008-2038549/57-262 (June 26, 2009). The following states exclude carriers of portable storage containers from household goods regulation: Alabama, Idaho, Indiana, Iowa, Massachusetts, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Virginia, and Washington. *Id.* In view of the changes made by Congress to expressly exclude portable storage containers and the trend in other states, it is required under federal law and appropriate with respect to the public interest for South Carolina to follow suit.

A recent rulemaking by the Pennsylvania Public Utility Commission described a similar change as distinguishing “the operating authority of carriers of household goods and carriers of property based upon the nature of the service provided and not upon the type of contents being transported.” Final Order Adopting Regulation, Revision of 52 Pa. Code § 21.1 Pertaining to the Term Household Goods in Use Carrier, L-2008-2038549/57-262 (June 26, 2009). In finding that a portable storage containers are not subject to household goods regulation, the State would retain the ability to ensure that carriers comply with safety and insurance regulations enacted pursuant to the police power and 49 U.S.C.A. §14501(c)(2)(A), thereby mitigating any lingering concerns regarding the public interest as articulated by the Public Service Commission in previous orders. *See* Order No. 2001-1141 Denying Petition for Declaratory Order and Granting

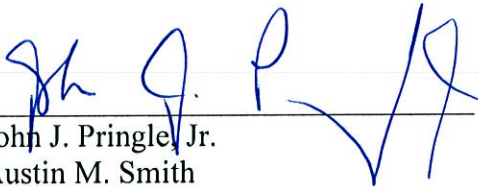


Class E Certificate, *In Re: Application of Charleston Portable Storage, LLC for a Class E Certificate of Public Convenience*, Docket No. 2001-330-T (Dec. 21, 2001)<sup>1</sup>.

### **CONCLUSION**

Based on the foregoing, the Public Service Commission should exclude carriers of portable storage containers from regulatory oversight governing the transport of household goods.

**ELLIS, LAWHORNE & SIMS, P.A.**



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January 25, 2010  
Columbia, South Carolina

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<sup>1</sup> Since the time of the Order, Congress dramatically altered the statute dealing with motor carriers of property and household goods, 49 U.S.C.A. §14501 (and the corresponding federal regulations were updated in conformity).

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2009-141-T**

Application of U-Haul Co. of South  
Carolina, Incorporated for a Class E  
(Household Goods) Certificate of Public  
Convenience and Necessity for the  
Operation of a Motor Vehicle Carrier

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**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of the **Brief of U-Haul Co. of South Carolina** via electronic mail and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

**VIA ELECTRONIC MAIL SERVICE**

Jeffrey Nelson, Esquire  
Office of Regulatory Staff  
Legal Department  
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**VIA ELECTRONIC MAIL SERVICE**

Mr. Tom Roth  
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**VIA ELECTRONIC MAIL SERVICE**

Mr. Albert H. Kohler  
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**VIA ELECTRONIC MAIL SERVICE**

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**VIA ELECTRONIC MAIL SERVICE**

Mr. Trey Ingram  
Trega, LLC d/b/a Apartment Movers, Etc.  
2908-B Maybank Highway  
Johns Island, SC 29455



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Carol Roof, Paralegal

January 25, 2010  
Columbia, South Carolina